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6 IN THE UNITED STATES DISTRICT COURT
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8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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10 VIOLETTE SUSU and JERRIES SOUSOU,

11 Plaintiffs,

No. C 18-00135 WHA

12 v.

13 BAYVIEW LOAN SERVICING, LLC, THE
14 BANK OF NEW YORK MELLON f/k/a THE
15 BANK OF NEW YORK, AS TRUSTEE FOR
16 THE CERTIFCAHOLDERS OF CWALT,
17 INC. ALTERNATIVE LOAN TRUST 2005-82,

Defendants.
_____ /

**ORDER GRANTING
MOTION TO DISMISS**

18 In this wrongful foreclosure action, defendants move to dismiss plaintiffs' complaint
19 pursuant to FRCP 12(b)(6) and 41(b). In 2005, *pro se* plaintiffs Violette Susu and Jerries
20 Sousou took out a \$1,612,500 home loan from America's Wholesale Lender, evidenced by a
21 promissory note and secured by a deed of trust on real property located in Dublin California.
22 At oral argument for the instant motion to dismiss, defendants' counsel represented that
23 plaintiffs had not made any payments on their mortgage loan since June 2008 and that their
24 current balance is approximately \$2.7 million. In May 2017, a notice of default was executed
25 and subsequently recorded in the Official Records of Alameda County. In August 2017 a notice
26 of trustee's sale was executed and thereafter recorded (Compl. ¶ 14, Exh. 1; RJN, Exhs. B–C).

27 Plaintiffs subsequently brought a wrongful foreclosure action against five defendants,
28 including the defendants to this action in October 2017. Defendants moved to dismiss the

1 complaint in the October 2017 action under FRCP 12(b)(6). After plaintiffs failed to meet the
2 deadline to respond, they received two extensions to file a response. Rather than responding,
3 plaintiffs voluntarily dismissed their case (Case No. 17-05879, Dkt. Nos. 1, 10–11, 18, 20–21,
4 24).

5 In January 2018, plaintiffs commenced this second *pro se* action for wrongful
6 foreclosure based on the same loan, again naming Bayview and BNY Mellon as defendants.
7 Plaintiffs then filed an emergency application for a restraining order to prevent the impending
8 foreclosure sale on their property, but an order denied that application on the ground that
9 plaintiffs were unlikely to succeed on the merits of their claims. During the course of this
10 action, plaintiff Violette Susu twice initiated proceedings in bankruptcy court and this Court
11 twice issued stays of this action. Each time the bankruptcy court dismissed plaintiffs’ action for
12 failure to comply with court orders. In May 2018, following the lifting of the second stay,
13 defendants filed a motion to dismiss this action in its entirety. Plaintiff Jerries Sousou then
14 again filed for bankruptcy, and a third stay of this action was issued. That stay subsequently
15 lifted when defendants gave notice that plaintiffs had failed to comply with the bankruptcy
16 court’s order. After the third stay of this action lifted, defendants re-filed and served their
17 motion to dismiss plaintiffs’ complaint on July 31 (Dkt. Nos. 1, 16, 19–20, 22, 24–25, 31–34).


18 Plaintiffs’ response to defendants’ motion to dismiss was due on August 14, but
19 plaintiffs still have not filed a response. An order to show cause was served on plaintiffs on
20 August 21. The order instructed plaintiffs to file a response by August 27 and stated that failure
21 to do so would result in dismissal. That date has long passed and no response has been filed.
22 At the hearing on defendants’ motion to dismiss well into the Court’s motion calendar, the
23 Deputy Clerk called the case, but plaintiffs were not present. At oral argument, defendants’
24 counsel represented that plaintiffs had called her the day before and told her that they would not
25 appear at the hearing and wanted to dismiss their action against defendants (Dkt. No. 37).

26 After considering the briefs filed herein and the oral argument submitted at the hearing
27 for this motion, defendants’ motion to dismiss is **GRANTED**. Because plaintiffs have failed to
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1 respond to deadlines governing this action, defendants' motion to dismiss for failure to
2 prosecute is also **GRANTED**. Plaintiffs' complaint is hereby **DISMISSED WITH PREJUDICE**.

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4 **IT IS SO ORDERED.**

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6 Dated: September 19, 2018.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE